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IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : April 26, 2006

\+ WP (C) No. 2760/2004

Shri K.R. Anand .....Petitioner

! Through: Mr. S.P. Singh Chaudhary, Advocate.

Versus

$ Delhi Development Authority & Anr. .....Respondents

^ Through: Mr. Anil Sapra, Advocate

CORAM:-

*** HON'BLE THE ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

ACTING CHIEF JUSTICE (Oral)

1 The petitioner in this writ petition has impugned the order passed by the learned Single Judge on 11.02.2004 dismissing his petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter to be referred as Act of 1996).

2 The factual matrix of the case is that the petitioner is a contractor and the respondents had awarded a contract to him on 07.07.1989 for development of Land and Peripheral Sewage Drain No.3, at Rohini, Phase-II,

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Delhi. This contract was awarded vide agreement No.4/EE/FPD-4/DDA/89-90 dated 07.07.1989. This agreement contained an arbitration clause being clause No.25, in terms of which the disputes that arose between the parties are required to be adjudicated upon and decided through the process of arbitration. The disputes, in fact, arose between the parties in respect of aforesaid contract. Since disputes had arisen, the petitioner wrote a letter to the respondents on 05.07.1996 and preferred his claim for payment of balance amount under the contract amounting to Rs.2,86,79,622/- with interest and requested the respondents to appoint an arbitrator in terms of arbitration clause between the parties. The respondents appointed Mr.N.K. Sharma, Superintending Engineer, Arbitration-I, DDA as an arbitrator but the petitioner did not appear before the said arbitrator. Consequent thereto, the arbitrator Shri N.K. Sharma concluded the case ex-parte only after hearing the respondents. The plea of the petitioner for not appearing before the aforesaid arbitrator is that he did not appear before the aforesaid arbitrator as he did not entertain his claim, although the same was sent to him. Thereafter, the petitioner filed a petition before this Court which was registered as AA-82/2002 wherein a learned Single Judge of this Court by order dated 21.07.2003 directed the Engineer Member, DDA to appoint some

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other arbitrator and to refer all the disputes under the contract to the said arbitrator. The respondents did not supply the vacancy for five months after passing of order dated 21.07.2003. On 02.01.2004, the respondents appointed Mr.K.S. Chauhan as an arbitrator in place of the earlier arbitrator Mr. N.K. Sharma. Consequent upon appointment of Mr. K.S. Chauhan in place of Mr. N.K. Sharma, the petitioner filed an application being IA No.9385/2003 in main arbitration case No.AA-82/2002 , pleading therein that as the respondents have failed to supply the vacancy in place of Mr. N.K. Sharma within thirty days, the respondents are deemed to have abdicated their power to appoint an arbitrator and requested the learned Single Judge to appoint an arbitrator in the matter. This request of the petitioner for appointment of an arbitrator by the Court was turned down by the learned Single Judge holding that the respondents were not obliged to supply the vacancy of arbitrator within thirty days from the date of Court order i.e. 21.07.2003.

3 Aggrieved by this order of the learned Single Judge, the petitioner has filed the present writ petition seeking to set aside the order and to appoint an independent person as an arbitrator in place of earlier arbitrator appointed by the respondents. The learned counsel for the petitioner has submitted that this Court may appoint any retired Judge of this Court as an arbitrator to

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adjudicate the dispute between the parties under the contract. This request made by the petitioner has been opposed by the counsel for the respondents who has contended that since the respondents have already appointed Mr.K.S. Chauhan in place of Mr.N.K. Sharma, the petitioner can appear before him to get his disputes decided. The respondents' learned counsel has not disputed that Mr.K.S. Chauhan was appointed after five months of the Court order passed on 21.07.2003 but according to him, it was not obligatory on the part of the respondents to supply the vacancy within thirty days of the date of the Court order as provisions of Section 11(5) of the Act of 1996 are not applicable to the facts of this case. Section 11(5) of the Act of 1996 is reproduced hereinbelow:-

> **Section 11-Appointment of Arbitrators-**
> **(5)** Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from the receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him.

4 A bare perusal of the above statutory provisions would show that the rule of thirty days for appointment of an arbitrator contained therein is strictly not applicable to the facts of this case. Would this mean that when a Court directs for appointment of an arbitrator, can the opposite party take a

plea that there is no clause in the agreement or Court order stipulating time for appointment of an arbitrator. If the plea of the respondents that there is no time limit for them to supply vacancy is accepted, then it would lead to uncertainty as the party who has been directed to supply the vacancy can sleep over the matter and would do nothing. Though in the present case Mr. K.S. Chauhan had been appointed as an arbitrator in place of Mr. N.K. Sharma after five months of the Court order, the respondents could have supplied the vacancy after eight months or even after a year of the passing of the Court order. Such an approach, if allowed, would negate the object sought to be achieved by the Arbitration & Conciliation Act, 1996 which provide for a speedier alternative mode of redressal of dispute between the parties. The parties are expected to act with promptitude when they take recourse for settlement of their disputes through the process of arbitration. In our opinion, the reasonable period for appointment of an arbitrator is thirty days from the date of request in cases where there is no stipulation in the arbitration agreement or the Court order for appointment of an arbitrator. We are conscious of cases where a party for reasons beyond this control may be justified in not appointing an arbitrator within thirty days but such circumstances which prevent a party from acting with promptitude should

have some objectivity in it and the material justifying the same should be placed before the Court as and when required. In the present case, the respondents have not placed any material before us to justify why they took five months in supplying the vacancy in place of Mr. N.K. Sharma. In our view, the respondents have abdicated their right to supply the vacancy as directed by the learned Single Judge vide order dated 21.07.2003 and therefore, we set aside the order of the learned Single Judge and hereby appoint Mr. Justice S.K. Agarwal, a retired Judge of this Court as an arbitrator to decide the disputes between the parties under the contract in question. The learned Arbitrator shall fix his own fee. The parties are directed to appear before the learned Arbitrator on 12.05.2006 at 4 PM.

5 Rule is made absolute. This petition stands disposed of accordingly.

ACTING CHIEF JUSTICE
(JUDGE)

S.N. AGGARWAL
(JUDGE)

APRIL 26, 2006
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